HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1457 OF 2005

M/s. P. J. Industrial Corporation through its partner,
Mrs. Pramiladevi Lodha ..Petitioner.

Versus.

Union of India. ..Respondent.

Shri. A. M. Shah with Dr. D. R. Talankar for the petitioner.

Shri. N. S. Fadia for the respondent.

CORAM: Smt. Ranjana P. Desai, & Abhay S. Oka, JJ.

DATE : November 24, 2005.

P.C.

1. The respondent is the applicant in Original Application No. 3057 of 2000 and the present petitioner is the defendant therein. For convenience parties are referred to as per their status in the application. The case of the applicant is that one M/s. Basant Alloy Steel Ltd. has drawn certain Bills of Exchange (hundies) on the defendant for valuable consideration. The hundies were payable after specified period. They were accepted by the defendants. The applicant - Bank discounted the hundies and made payments thereof to the drawer.

According to the applicant - bank the defendant failed and neglected to make payment when the hundies were presented on their due dates. The Debt Recovery Tribunal ("DRT" for short) allowed the claim of the applicant bank. It was carried in appeal before the Debt Recovery Appellate Tribunal ("DRAT" for short). That appeal was dismissed by the DRAT and hence this writ petition.

2. We have heard the learned counsel appearing for the petitioner / defendant. In our opinion, there is no perversity attached to the impugned orders warranting interference in writ jurisdiction. The first submission of the petitioner is as regards non stamping of the hundies which has been rightly rejected by the DRT as DRAT in view of the notification issued by the Government of India dated 1st August 1989. The second contention was as regards the non joinder of the drawer. This contention is also rightly rejected because it is well settled that the suit merely against the acceptor is maintainable. It is argued that the hundies were required to be drawn jointly by two authorised signatories, but here the hundies are signed by one official. It is also contended that the hundies were not accepted by the defendant. This contention also does not have any merit because the finding is

recorded by the DRT as well as DRAT that the defendant has accepted the hundies. Significantly in reply dated 18th July 1992 sent by the defendant to the applicant, there is no mention that the defendant has not accepted the hundies. It is therefore not open to the defendant to take up this contention. This contention is therefore rightly rejected. The submission that the payment has been made directly to the borrower and therefore the defendant is discharged also cannot be accepted. Assuming payment was made directly to the drawer, the acceptors liability does not cease to exist. He cannot avoid his liability. In view of the above, in our opinion, there is no merit in this writ petition. Writ Petition is rejected.

(SMT. RANJANA P. DESAI, J.)

(ABHAY S. OKA, J.)